MALAYSIAN REPORTS

HOCK LIM ESTATE SDN. BHD. v. COLLECTOR OF LAND REVENUE, JOHORE BAHRU

[F.C. (Raja Azlan Shah C.J. (Malaya), Wan Suleiman & Salleh Abas F.JJ.) February 4 & April 7, 1979]

[Johore Bahru — Federal Court Civil Appeal No. 202 of 1977]

Land Law — Land Acquisition — Compensation — Evidence of sales in vicinity.

The appellants in this case were the owners of a rubber estate, a portion of which was acquired by the Government. The appellants' expert witnesses using the "income" method of valuation, arrived at a valuation of $5,633 per acre. The Government expert on the other hand, used the "before" and "after" method, that is taking into account any increase or decrease in value of the remaining land as a result of the acquisition. She recommended compensation in the sum of $224,000, a little over $1,000 per acre. The learned judge and assessors, rejected the income method of valuation advanced by the appellant's valuers and also regarded the figure arrived at by the Government valuer as being too low. They considered the sales of land in the vicinity and taking the area as a whole, awarded compensation of $1,660 per acre. The appellants appealed.

Held, dismissing the appeal: the safest guide to what fair compensation should be would be provided by the evidence of recent sales of similar land in the vicinity. In this case there was no reason to disagree with the award of the court below.

Case referred to:-

(1) *Nanyang Manufacturing Co.* v. *The Collector of Land Revenue* [1954] M.L.J. 69, 71.

FEDERAL COURT.

Edmund Yong for the appellant.

Nik Mohamed bin Nik Yahaya, State Legal Adviser, Johore, for the respondent.

Cur. Adv. Vult.

Wan Suleiman F.J. (delivering the judgment of the Court): The appellants are the owners of a rubber estate in the Mukim of Plentong, Johore Bahru District. Out of a total of 1,128 acres 3 roods, 221 acres 3 roods 20 poles were acquired by Government for the purpose of building a harbour, housing as well as an industrial estate. Though no evidence was adduced to that effect it is common knowledge that the land acquired as well as hundreds of lots acquired at the same time became part of the new township at Pasir Gudang.

The material date for valuation purposes would be that of the *Gazette* Notification under section 4 of the Land Acquisition Act of February 25, 1970.

This estate is at the 18th milestone Masai Road. The acquired portion lies on the southern side of this road and has a road frontage. On the relevant date the acquired portion was completely planted with rubber trees of good clone, about 15 years old. The maps R7 and R10 in the appeal records clearly show the position of the portion acquired and other land in respect of which there has been recent sale transactions.

The appellants' two expert witnesses, both quantity surveyors elected to use the "income" method of valuation. They advanced the view that the "comparison with other sales" method was unsatisfactory, that it would be difficult to compare one estate with another as there are too many variable features to be considered. Based on the net income for the period 1967-1970 the appellants' valuers arrived at a valuation of $5,633 per acre.

The Collector's expert, a Government Chartered Surveyor, used what she called the "before" and "after" method. This method takes into account any increase or decrease in the value of the remaining land as a direct result of the acquisition. She estimated the market value of the estate before acquisition as follows: —

> 221.87 acres, the portion acquired, at $311,000. The remaining 907 acres at $1,450 per acre giving a total of $1,315,000, so that for the two portions the total value would be $1,626,000.

She then estimated the market value of the remaining portion after acquisition as follows: —

> Front portion, that is, portion fronting the road, 28 acres at $3,000 an acre — $84,000.
>
> Remaining area of 879 acres at $1,500 per acre gives the total of — $1,318,500
>
> Total value — $1,402,500.

Deducting the last mentioned figure from the total for the two portions before acquisition, she recommended compensation to be in the sum of $224,000, a little over $1,000 per acre.

In the process of valuation this witness claimed to have taken into account sales of land, both estates and small holdings before and after the relevant date, such land being in the neighbourhood. The 6 certified copies of transfers before the relevant date are marked R9 and the 7 after such date R11 (a)-(g) in the appeal records. There is evidence that she had, though not in our opinion with sufficient thoroughness taken into account the similarities and differences between the land mentioned above and the land acquired.

Perhaps it would not be out of place here to remark that in determining compensation consideration can be taken of any increase in the value of *other* land of the person interested likely to accrue from the use to which the land acquired will be put (First Schedule para. 2(a)). That this witness had clearly done, for she gave the 28 acres having road frontage a potential value far above its purely agricultural value.

The court below rejected the "income" method of valuation advanced by the appellants' valuers, remarking that no evidence had been adduced to satisfy it that land could be sold at between $5,000 and $7,000 per acre immediately before or after relevant date.

The court evidently regarded the figure arrived at by the government valuer as being too low. Perhaps had there been evidence adduced before the learned judge that in the same *Gazette* Notification (PTG.J.(R)Bil.1; PHTJB.7/2/70) some two hundred other lots of land totalling over 3,000 acres mentioned in the Schedule to the "Notice of Intended Acquisition" were to be put to the same use as the land acquired, the court might have been more disposed to agree the remaining portion must necessarily benefit to a considerable extent by the prospects of being immediately adjacent to a largish new township and port.

The judge and his assessors felt that the area immediately fronting the road — some 30 acres — would fetch $3,000 per acre and the remaining 191 acres 3 roods 20 poles $1,500 per acre, so that taking the area as a whole, the compensation to be awarded should be $1,660 per acre.

Before us Mr. Yong for the appellants abandoned his only other ground i.e. that the learned trial judge had erred in not considering the "income" method of valuation relied upon by his valuers. In view of this development we need only say that the learned judge gave very cogent reasons for not accepting their calculations in his judgment, for he considered these to be too extravagant.

We can thus say that the parties are now agreed that the safest guide to what fair compensation should be would be provided by the evidence of recent sales of similar land in the vicinity. Buhagiar J., after considering Indian authorities, sums up a principle which has been accepted by our courts again and again when he said in *Nanyang Manufacturing Co.* v. *The Collector of Land Revenue, Johore*[1]: —

"I consider that the safest guide to determine the fair market value is evidence of sales of the same land or similar land in the neighbourhood, after making due allowance for all the circumstances."

Mr. Yong produced a schedule of transactions in land, most of which were under rubber cultivation, just before and after this acquisition. This list is identical with the one the Collector's valuer had taken into account (see page 52 of the appeal records), and which the court below had also considered in arriving at its own award (pg. 64/65 of records).

Mr. Yong made remarks which we would regard as some sort of complaint that the judge had only referred to transactions in the Collector's schedule abovementioned. If by that he meant that the judge should have taken into account the transactions relied upon by the appellants' valuers (page 39 of records) viz. transactions No. 26 to 29 on Exhibit P8, where 11 small lots were sold to the same purchaser, lots mostly below 1 acre, the largest being 4 acres 20 poles, for approximately $6,000 per acre between January 13, 1970 and February 21, 1970, we must say that these lots seem to have been specially selected to buttress appellants' valuation without adequate evidence to justify such selection. Indeed since Mr. Yong himself has made no further reference to them, it will be safe to assume that he does not wish to rely on them.

This fact also lends weight to what the Collector's valuer had said i.e. that these were special purchases intended for a jetty to be built in connection with an industrial undertaking presumably by Stia Jaya Woodchips Sdn. Bhd.

Having considered the 13 transactions which the Collector's valuer had taken into account, which is appended hereto and marked A1, and the relative merits and demerits of each, and having perused the maps at page 115 of the records [R10(a) and R10(b)], we are unable to disagree with the court below that the "market value of good rubber land in the area on the relevant date would be at the most $1,500 per acre, particularly when a big area of land is involved". In the circumstances, we do not think that appellants can complain about the 30 acres immediately adjoining the road being given a special value of $3,000 per acre. It is true that no reason was given for this special value, but it seems obvious that an element of potential development value has been added to its value as agricultural land by the court.

It may be as the learned State Legal Adviser said that this placed the award on a generous scale, bearing in mind the report of the Collector's valuer (pg. 50/51 of the records) that there was little building or industrial potential. The form of the award of special value makes it unlikely that it is an award for damage from severance loss permissible under para. 2(c) of the First Schedule. Indeed no evidence of or claim for severance loss had been advanced by the appellants. It cannot be denied that apart from the increase in the value of the land acquired from the use to which it will be put when acquired (a factor which *cannot* be taken into account when determining compensation) there is evidence at least of some other industrial development already in progress, which would justify giving a portion adjoining the road a higher market value. This however cannot support Mr. Yong's argument that the hinterland should be given the same value. Indeed we are inclined to agree with the learned Legal Adviser that if the court below had erred, it had erred on the side of generosity.

We would therefore uphold the award of the court below and dismiss this appeal with costs.

Appeal dismissed.

Solicitors: *Dato S.M. Yong & Co.*

APPENDIX A1

	Land	*Transfer Date*	*Area*	*Price ($)*	*$/acre*	*Map*	*Comments*	
1.	Tong Hing Plantation	31.7.69	5,738.75a.	6,205,544	1,080	R-7	East of acquired land Access laterite road Maintenance good Rubber 2 to 32 years old 145.54 ac. 29-32 years old 1779.24 ac. below 4 years old 1,307 ac. 6-8 years old Only 2000 ac. 11-20 years old 4 miles farther away	47 B, C. 91 54 C.
2.	Lanset Estate	8.8.69	1,414.60a.	1,295,260	1,080	R-7	East of Tong Hing, Maintenance fair. Rubber 6-15 years old 528 a. 7 years or less 188 a. 10 years old 562 a. 11-15 years old	 47 C 91.

	Land	*Transfer Date*	*Area*	*Price ($)*	*$/acre*	*Map*	*Comments*	
3.	Lots 6015	18.11.69	14.22a.	8,000	555	R-10(a)	Old rubber not tapped	47 D
4.	1842	30.11.69	27.75a.	25,530	920	R-10(a)	Old rubber, blukar, coconuts	47 D
5.	6013	8.12.69	25.00a.		580	R-10(a)	Old rubber not tapped	47 E.
6.	Lots 2323	20.12.69	±30a.		1,500	R-10(b)	Hilly land	
	2324				1,508		Rubber 7 years old	
	2325				1,500		These lots are well away from road, near appellants' unacquired land	116.
(a)	Lots 2415 to 2417	21.3.70	15a.		1,507	R-10(a)	Access laterite road Rubber 5 years old 5 acres coconuts Inspected end of 1971 Rubber 5 years not producing Some swamps	48 A 56 E
	Lots 2407 to 2414 2418 to 2422 2484 to 2488 (18 lots)	21.3.70	89.975a.		1,500	R-10(a)	Immediately south of previous lots 5 years old rubber 20 acres swamp	 48 C
(b)	Lot 1124	3.6.70	26a. 2r. 20p.		500	R-10(a)	Land miles from road Rubber 6 years old not tapped 14½ a. rubber remainder coconut Land far from main road Had to pass over other people's land	115 57 B, C.
(c)	Beng Aik Estate (5 lots)	6.10.70	452a.		1,000	R-7	Stamp valuation $1,300 p.a. Total planted area 383 a. 179 acres 2 years old 154 acres 8/10 years old 50 acres 14 years old Narrow shape of land	48 E 48D 91 91
(d)	Lots 1433 1516, 2406	6.10.70	30a. 1r.	41,000	1,355		Stamp valuation $2,645 p.a. Lot 2406 Blukar Lot 1433 cleared with 2 semi-servant houses Lot 1516 partially cleared and levelled Inside local council area	49 A 49 A, B.
(e)	Lot 2639	8.10.70	16a.	33,000	2,063		Located in Kampong Pasir Gudang Old coconuts, 2 acres pond Income negligible Away from Masai Road	 49 C 57 D.
(f)	Lots 34 35, 36	20.10.70	4a. 25p.	6,000	1,400		Old coconuts No yield, no income Away from Masai Road Access through other people's land	49 D 57 E.
(g)	Lot 1949	16.12.70	94a. 3r. 35p.		632		Hilly land old rubber	49 E.